

REMARKS

New claims 15-19 have been added and are believed to be patentable over the cited references. Support for the new claims can be found in the as-filed specification, for example in paragraphs [12] and [19].

Claim 1-8 have been rejected under 35 U.S.C. §102(b) as anticipated by, or in the alternative under 35 U.S.C. §103(a) as obvious over Schmeing (U.S. 5,166,259) or Diehl (US2002/0028858).

Reconsideration is respectfully requested. Schmeing teaches an acid content of 0.5% to about 5%. In contrast, claim 1 recites an acid content of from about 6 to about 11% by weight. The Office Action states that “about 5%” is considered to anticipate “about 6%”. No authority is cited to support this position, which is believed to be contrary to well established principals. The manual of patent examining procedure, §2131.03, III, states that prior art that teaches a value or range that is close to but does not overlap or touch, does not anticipate. Anticipation under §102 can be found only when the reference discloses exactly what is claimed. Where there are differences between the reference disclosure and the claim, the rejection should instead be based on §103, and the differences must be taken into account. *See Titanium Metal Corp. v. Banner*, 778 F. 2d 775, 227 USPQ 773 (Fed. Cir. 1985) (claims to titanium alloy with 0.8% nickel and 0.3% molybdenum were not anticipated by a reference showing a titanium alloy containing 0.75% nickel and 0.25% molybdenum). In the present case, when the claimed range and the range taught by Schmeing are compared, it can be seen that, not only do they not overlap or touch, but they go in opposite directions. In other words, it cannot be said that a range of 0.5 to about 5% anticipates a range of from about 6 to about 11%.

Diehl, which is silent with regard to glass transition temperatures, does not provide any specific examples falling within the claimed ranges. Furthermore, the broad ranges taught by Diehl do not disclose the claimed ranges with sufficient specificity to constitute anticipation under the patent statutes. See MPEP §2132.03, II.

Claims 9-14, submitted with the RCE, and new claims 15-19, are likewise believed to be patentable over the cited references, either alone or in combination. With regard to claims 9, 13 and 14, neither of the cited references teach the claimed ranges of acrylic acid, methacrylic acid, and itaconic acid.

With regard to claim 11, neither of the cited references teach the claimed range of surfactant.

With regard to claims 15-19, neither of the cited references teach polymer particles having monomeric units consisting essentially of the claimed monomeric units. Withdrawal of the rejection under §102 and §103 is respectfully requested.

CONCLUSION

A Notice of Allowance is respectfully requested.

New claims 15-19 have been added, bringing the total number of claims to 19.

No additional fees are believed to be due.

If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayment to Deposit Account No. 07-1045 (Docket No. 0-010424USSZ2FN).

Respectfully submitted,

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